

PUBLIC NOTICE

September 9, 1998 Public Hearing

ITEM #1

Special Education Pupils Program Regulations (AB 3632)

CHAPTERS

California Code of Regulations, Title 2, Division 9, Chapter 1 (Interagency Responsibilities for Providing Services to Pupils with Disabilities), Article 1 (General Provisions), Sections 60000 (Scope), 60010 (Education Definitions), 60020 (Mental Health Definitions), and 60025 (Social Services Definitions); Article 2 (Mental Health Related Services), Sections 60030 (Local Mental Health and Education Interagency Agreement), 60040 (Referral to Community Mental Health Services for Related Services), 60045 (Assessment to Determine the Need for Mental Health Services), 60050 (Individualized Education Program for Mental Health Services), and 60055 (Transfers and Interim Placements); Article 3 (Residential Placement), Sections 60100 (Placement of a Pupil with a Disability Who is Seriously Emotionally Disturbed), and 60110 (Case Management for a Pupil with a Disability Who is Seriously Emotionally Disturbed and is in a Residential Placement); Article 4 (Financial Provision for Mental Health Services, Special Education and Residential Placement), Section 60200 (Financial Responsibilities); Article 5 (Occupational Therapy and Physical Therapy), Sections 60300 (California Children's Services (CCS) Medical Therapy Program Definitions), 60310 (Local Interagency Agreements Between CCS and Education Agencies), 60320 (Referral and Assessment), 60323 (Medical Therapy Program Responsibilities), 60325 (Individualized Education Program for Therapy Services), and 60330 (Space and Equipment for Occupational Therapy and Physical Therapy); Article 6 (Home Health Aide), Section 60400 (Specialized Home Health Aide); Article 7 (Exchange of Information Between Education and Social Services), Sections 60505 (Community Care Facilities), and 60510 (Prior Notification); Article 8 (Procedural Safeguards), Sections 60550 (Due Process Hearings), and 60560 (Compliance Complaints); and Article 9 (Interagency Dispute Resolution), Sections 60600 (Application of Procedures), and 60610 (Resolution Procedure).

INFORMATIVE DIGEST

Section 7587 of the Government Code authorizes each state department named in Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, to develop regulations, as necessary, for the department or designated local agency to implement Chapter 26.5. These regulations implement, interpret, and make specific, Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for the provision of related services to children with disabilities.

The Health and Welfare Agency, specifically the California Departments of Mental Health, Health Services (California Children Services and Medi-Cal Programs), and Social Services, and the California Department of Education, hereinafter "Departments," have adopted the following sections of Title 2 of the California Code of Regulations, Chapter 1:

Article 1. General Provisions

Section 60000 Scope

This section specifies the programs which provide related services and the children with disabilities who are eligible to receive related services in accordance with this chapter and in compliance with the Individuals with Disabilities Education Act (IDEA) of 1990 which was reauthorized in 1997 and is now referred to as Public Law 105-17. This law amended the Education for All Handicapped Children Act (EHA) of 1975 which is referred to as Public Law 94-142.

Section 60010 Education Definitions

This section sets forth education definitions for the terms used in this chapter. The list of definitions contained in these regulations includes the terms: "administrative designee," "assessment," "assessment plan," "confidentiality," "county superintendent of schools," "day," "designated instruction and services," "individualized education program (IEP)," "individualized education program team (IEP team)," "local education agency (LEA)," "local interagency agreement," "necessary to benefit from special education," "nonpublic, nonsectarian agency," "nonpublic, nonsectarian school," "parent," "pupil with a disability," "qualified," "related services," "special education," "special education local plan," and "special education local plan area (SELPA)."

Section 60020 Mental Health Definitions

The subsections in this section set forth mental health definitions for the terms used in this chapter. The list of mental health definitions includes terms such as: "community mental health service," "county of origin," "expanded IEP team," "host county," "local mental health director," "medication monitoring," "mental health assessment," "mental health assessment plan," "mental health services," and "qualified mental health professional."

Section 60025 Social Services Definitions

This section is proposed to define terms specific to the Department of Social Services such as: care and supervision; certified family home; community care facility; community treatment facility; foster family agency; foster family home; group home; licensed children's institution; and small family home.

Article 2. Mental Health Related Services

Section 60030 Local Mental Health and Education Interagency Agreement

The proposed regulations specify the responsibilities of participants in the local interagency agreement and clarify the procedures necessary to be included in a local interagency agreement.

Section 60040 Referral to Community Mental Health Services for Related Services

This section requires local education agencies to include the necessary components of a referral from the education agency to a mental health agency and the responsibilities of the education agency to conform with state and federal law.

Section 60045 Assessment to Determine the Need for Mental Health Services

This section sets forth the responsibility assumed by local mental health programs when a referral is received from the local education agency and clarifies the contents of the assessment plan, responsibility for obtaining parental consent and the timelines for completion of the assessment.

Section 60050 Individualized Education Program for Mental Health Services

This section specifies the components of the individualized education program (IEP) which pertain to mental health services. It requires that there must be evidence of parental consent for mental health services.

Section 60055 Transfers and Interim Placements

This section requires that the local education agency or IEP team ensure the provision of interim mental health services for a pupil with a disability who transfers from one school district or from one county to another. It also requires the new IEP team to meet within 30 days to reconsider appropriate IEP services.

Article 3. Residential Placement

Section 60100 Placement Of A Pupil With A Disability Who Is Seriously Emotionally Disturbed

This section specifies the interagency responsibilities of an IEP team when placing a pupil with a disability who is seriously emotionally disturbed out of his or her home. The subsections incorporate recent state statutory changes relating to the appointment of surrogate parents for children who are dependents or wards of the court. The process for seeking least restrictive alternatives to residential placement is described. Documentation relating to the need for residential placement is now required.

The description of the types of residential placement and rates for care and supervision and the parameters for making residential placements out of California are included.

The new state law requires a description of the review process by the local Board of Education.

A proposed subsection describes the requirement to insure that mental health services are provided as specified in the IEP by qualified personnel.

Section 60110 Case Management For A Pupil With A Disability Who Is Seriously Emotionally Disturbed And Is In A Residential Placement

The proposed regulations expand and make specific, case management services to be provided by the community mental health service.

Article 4. Financial Provision for Mental Health Services, Special Education and Residential Placement

Section 60200 Financial Responsibilities

This section contains information concerning the conditions and limitations for reimbursement for the provision of special education instruction, related services, and residential placement.

The section emphasizes that services are to be provided at no cost to the parent, in accordance with federal law and clarifies, for participating agencies, that the community mental health service from the pupil's county of origin is responsible for the provision of and payment for assessments and mental health services.

Local education agencies are required to provide transportation to mental health services for a child with a disability and to provide transportation to and from the residential treatment program.

A subsection requires local mental health programs to authorize payment to licensed group homes based upon rates established by the Department of Social Services.

A subsection is included which directs the County Welfare Department to issue payments for out-of-home care services.

Article 5. Occupational Therapy and Physical Therapy

Section 60300 California Children's Services (CCS) Medical Therapy Program Definitions

The subsections in this section set forth occupational therapy and physical therapy definitions for the terms used in Article 5 of this chapter. This section includes terms such as: "assessment plan", "assessments for medically necessary occupational therapy and physical therapy", "assessment report for therapy", "California Children Services panel", "dependent county agency", "documented physical deficit", "independent county agency", "medical therapy conference team", "medical therapy program eligible conditions", "medical therapy unit", "medical therapy unit satellite", "medically necessary occupational therapy and physical therapy services", "medical therapy services", "necessary equipment", "necessary space", "occupational therapy and physical therapy", and "therapy plan".

Section 60310 Local Interagency Agreements Between CCS and Education Agencies

This proposed section specifies the requirements for both agencies that reflect changes in state and federal law and describes local procedures that will be compatible with local and regional configurations. Requirements include: the identification of a liaison; referrals; exchange of information; improved interagency notification procedures; IEP participation and procedures; transportation; facility needs; plans for mutually beneficial staff development; local conflict resolution; and the annual review of the interagency agreement.

Section 60320 Referral and Assessment

This proposed section clearly specifies the responsibilities for assessment of fine and gross motor skills of referred pupils. Proposed subsections state the responsibilities for complete exchange and release of information, specific timelines for referral and assessment, record keeping, parent notifications and consent, monitoring of timelines, assessment plans, independent assessment, and different modes of services.

Section 60323 Medical Therapy Program Responsibilities

This section describes the responsibilities of the CCS Medical Therapy Program, including the assessment of need for medically necessary occupational therapy or physical therapy, defining measurable functional goals and objectives, approval by the Medical Therapy Conference team of therapy plans and who may provide the therapy services.

Section 60325 Individualized Education Program for Therapy Services

This section describes the components of the individualized education program (IEP) for a child with a disability who receives services from California Children Services and also from special education. This section also describes the participation of CCS in the IEP meeting. This section describes the circumstances under which CCS will notify the LEA of the status of the referral, assessment, or need for an IEP team meeting. An additional subsection describes the circumstances under which the IEP team will be convened by the local education agency and contains the description of alternative services or occupational therapy or physical therapy which may be provided by the local education agency.

This section also includes the requirement that personnel be qualified and the provider must be specified in the IEP.

Section 60330 Space and Equipment for Occupational Therapy and Physical Therapy

This section is proposed to meet the needs of local California Children Services therapy providers and local education agencies, requiring coordination of location, construction, equipment and use of space and equipment provided by the local education agencies to be specified in the special education local plan. The provisions require joint agency cooperation at the state and local levels.

Article 6. Home Health Aide

Section 60400 Specialized Home Health Aide

This section describes the responsibility for DHS to provide for an appropriate care-giver to deliver life supporting medical service in the school for a pupil who is receiving such services in the home through the Medi-Cal program. The section also includes the definition of life supporting services.

Article 7. Exchange of Information Between Education and Social Services

Section 60505 Community Care Facilities

This section is proposed to describe the process for disseminating information relating to Community Care Facilities to the Department of Education and to counties and special education local plan areas.

This section describes the responsibility of the special education local plan area administrator to provide the facility licensee with information related to special education programs within the area and the ability of special education programs to accommodate the expanding pupil population.

Section 60510 Prior Notification

This section is included to reflect Chapter 26.5 of the Government Code, Section 7579, which requires agencies to notify local education agencies of impending residential placements of children who have a disability or are suspected to be disabled.

This section specifies the information that will be most useful to the education agency in making an appropriate educational placement. This section provides reciprocal information to the county or origin which specifies the available placement options in the local public and nonpublic schools following the determination of the IEP team.

Article 8. Procedural Safeguards

Section 60550 Due Process Hearings

This section contains the purpose of the due process hearings and the procedures for due process and mediation.

A subsection which relates to the preparation of documentation for a due process hearing is included as well as a subsection that requires the agency that is found to be responsible for providing the service to be bound by the decision of the hearing officer. This section also addresses the fiscal responsibility for the due process procedures.

Section 60560 Compliance Complaints

This proposed section requires compliance with new state regulations for Uniform Complaint Procedures in Title 5 Section 4650 et seq. of Title 5 of the California Code of Regulations.

Article 9. Interagency Dispute Resolution

Section 60600 Application of Procedures

This section contains information regarding the interagency dispute resolution process pursuant to the Education Code.

This section specifies the documentation necessary when requesting the resolution of a dispute and describes the responsibility for the financial support of services in the event the qualified professional has not made the recommendation which is recorded on the IEP.

Section 60610 Resolution Procedure

This section specifies the provider of the services until the dispute resolution proceedings are completed and requires that the Superintendent of Public Instruction and the Secretary of the Health and Welfare Agency or their designees meet and reimburse the agency that provided the services in the interim, if applicable.

This section also requires that the resolution of the dispute be mailed to the originating party within 60 days of the receipt of the complaint.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Departments have determined that the regulations impose a mandate on local mental health service agencies to serve eligible special education pupils. These may require state reimbursement under Section 17561 of the Government Code. These regulations also impose a mandate on school districts to serve special education pupils in the least restrictive manner possible and to refer pupils who appear to need mental health services to the community mental health service. Additional expenditures for medical therapy services which are not reimbursable by the State will be financed by the county share of CCS.

FISCAL IMPACT STATEMENT

- A. Fiscal Effect on Local Government: Some additional costs will result for community mental health services based on the shift in fiscal responsibility for out-of-state placed pupil's case management and mental health costs from local education to local mental health. This cost increase has been estimated at \$2.4 million which may be accessed through the mandates claiming process. Since this process is a retroactive billing process local government will bear the initial, up-front costs.

There will be additional costs to the local county CCS programs, estimated to be approximately \$805,000 to meet the medical therapy services requirements of the regulations. These costs will not be reimbursed through the mandates claiming process; they will be financed from the county share of CCS.

- B. Fiscal Effect on State Government: An increase of approximately \$2.4 million will result eventually due to the shift in responsibility for out-of-state case management and mental health treatment costs from education to local mental health.

There will be additional costs to the state general fund, estimated to be approximately \$3,500,000, for the CCS and Medi-Cal programs to meet the requirements of implementing the regulations.

- C. Fiscal Effect on Federal Funding of State Programs: These regulations will have no impact on federal funding for the provision of local mental health services.

There is estimated to be additional costs of \$412,000 to federal funding of the Medi-Cal Program to pay for additional therapy services that would be provided as the result of implementing these regulations.

- D. Fiscal Effect on Private Persons or Businesses Directly Effected: None.

DETERMINATIONS:

IMPACT AND COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

Local mental health agencies will experience an increase in costs of approximately \$2.4 million to pay for mental health treatment and case management services for out-of-state placements. Local mental health agencies will also experience increased responsibilities to case manage out-of-state placements necessitating quarterly face to face visits with pupils placed out-of-state and thus making staff less available for their usual local duties. Local school districts will save the same \$2.4 million as the fiscal and programmatic responsibilities for these activities are shifted from them to local mental health agencies. Additional expenditures of approximately \$805,000 for medical therapy related services, which are not reimbursable by the State, will be financed from the county share of CCS.

EFFECT ON HOUSING COSTS

The Departments have determined that the proposed regulations will not impact housing costs.

IMPACT ON THE REGULATED COMMUNITY

The proposed regulations impose no additional costs on the regulated community.

IMPACT ON SMALL BUSINESS

The Departments have determined that the proposed regulations will not effect small businesses in California because there are no new requirements besides those that currently exist in statute.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The Departments have determined that the adoption of these regulations will neither: (1) create nor eliminate jobs within California, (2) create new business or eliminate existing business within California, or (3) affect the expansion of business currently doing business within California.

ABILITY TO COMPETE WITH BUSINESSES IN OTHER STATES

These proposed regulations will cause local mental health agencies to more actively seek in-state providers of residential services and may therefore increase California's ability to compete with providers from other states.

The Departments have determined that the proposed regulations will not have significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(12) the Departments must determine that no alternative considered would either be more effective in carrying out the purpose for which the regulatory action is proposed or would be as effective and less burdensome on the affected private persons than the proposed regulations.

The location for the public hearing is accessible for the physically disabled in accordance with Civil Code Section 54.1.

AUTHORITY AND REFERENCE CITATIONS

The Departments adopt these regulations under the authority granted in Government Code Section 7587 and Welfare and Institutions Code Sections 10553, 10554, 11462(i) and (j), and 11466.1.

Subject regulations implement and make specific:

Government Code Sections 7570, 7572, 7572(e), 7575, 7575(a), 7575(d), 7575(e), 7576, 7576(a), 7577, 7578, 7579, 7579.5, 7580, 7585, and 7586;

Welfare and Institutions Code Sections 361.2(h), 727(b), 4094, 5328, 5608, 11400(c), (g), and (h), 11402(a), 11460(c)(2) through (c)(3), 16507.5(b), 17710, 17736(b), and 18350 through 18356;

Health and Safety Code Sections 1502(a), 123825, 123830, 123850, 123860, 123875, and 123905;

Education Code Sections 56028, 56034, 56050, 56140, 56155.5, 56156, 56170 to 56172, 56220, 56320, 56321, 56325, 56327, 56329, 56341, 56344, 56345, 56363, and 56501 through 56507;

California Code of Regulations, Title 5, Sections 3001(x), 3051.6, 3051.6(b), 3051.9, 3051.10, 3051.11, 3061, 3082, and 4650;

California Code of Regulations, Title 9, Sections 542 and 543;

California Code of Regulations, Title 22, Sections 51337 and 80001(g)(1);

California Business and Professions Code, Chapter 5.7, Article 2, Section 2620;

Code of Federal Regulations, Title 34, Sections 300.346, 300.500, and 300.532;

Clovis Unified School District (1990, Ninth Circuit) 903 F.2d 635;

Corbett v. Regional Center of the East Bay Inc. and Linda McMahon, Director of the Department of Social Services, (1988) 9th Cir. 699 F. Supp. 230;

In re Roger S. (1977) 19 Cal.3d. 921;

and In re Michael E. (1975) 15 Cal.3d. 183.